

Message Text

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ACTION ARA-10

INFO OCT-01 IO-13 ISO-00 DHA-02 ORM-02 MCT-01 AID-05 SCS-03

SCA-01 SAM-01 CIAE-00 DODE-00 PM-04 H-02 INR-07 L-03

NSAE-00 NSC-05 PA-01 PRS-01 SP-02 SS-15 USIA-06 /085 W

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R 081525Z OCT 76

FM AMEMBASSY BUENOS AIRES

TO SECSTATE WASHDC 7478

INFO USUN NEW YORK 670

USMISSION GENEVA

AMEMBASSY MONTEVIDEO

AMEMBASSY SANTIAGO

C O N F I D E N T I A L BUENOS AIRES 6648

E.O. 11652: GDS

TAGS: PGOV, SHUM, AR

SUBJECT: SUPREME COURT AND GOA AGREE ON LIMIT OF MILITARY JUSTICE
JURISDICTION

REF: BUENOS AIRES 6611

1. ARGENTINE SUPREME COURT HAS RULED THAT JURISDICTION OF
MILITARY JUSTICE SYSTEM OVER SUBVERSION AND ARMS CONTROL
VIOLATIONS APPLIES ONLY WHEN IT IS CLEAR THAT OFFENSE IS
ACTUALLY LINKED TO SECURITY OF NATION.

2. CASE AROSE LAST MAY IN WHICH INDIVIDUAL WAS DETAINED
IN SANTA CRUZ PROVINCE ON SUSPICION OF VILLATION OF ORDIN-
ARY CRIMINAL LAWS. WHILE BEING INTERROGATED IN POLICE
STATION, SUSPECT VERBALLY "CHIDED AND OFFENDED" POLICE
CHIEF. LOCAL CIVILIAN JUDGE, BACKED UP BY JUFICIAL AUTHORI-
TIES OF PROVINCE, DECLINED TO ACCEPT CHARGE PRESENTED BY
APPARENTLY OUTRAGED POLICE, HOLDING THAT THIS "ATTACK" ON
SECURITY FORCES CAME UNDER LAW GIVING COMPETENCE TO
MILITARY COURTS. COURT MARTIAL HAVING JURISDICTION OVER ZONE
IN TURN REFUSED TO HEAR CASE AS IT DID NOT INVOLVE ACTUAL
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SUBVERSION AND DID NOT AFFECT SECURITY OF NATION IN SENSE OF

LAWS PLACING SUCH OFFENSES UNDER MILITARY COURTS. CASE REACHED SUPREME COURT WITH RECOMMENDATION OF GOA ATTORNEY GENERAL THAT IT BE PLACED UNDER CIVILIAN COURTS OF PROVINCE, CITING REASONING OF COURT MARTIAL THAT IT DID NOT AFFECT NATIONAL SECURITY OR THE SECURITY FORCES. SUPREME COURT AGREED AND INSTRUCTED LOCAL SANTA CRUZ PROVINCE CIVILIAN JUDGE TO ACCEPT JURISDICTION.

3. IN SOMEWHAT SIMILAR RULING, COURT HELD THAT FEDERAL CIVIL COURT IN CORDOBA HAD COMPETENCE IN CASE OF INDIVIDUAL CHARGED WITH ILLEGAL POSSESSION OF FIREARM CLASSIFIED AS "MILITARY WEAPON" (WHICH INCLUDES FOR EXAMPLE ANY PISTOL OR RIFLE OF MILITARY CALIBER), AS IT HAD NOT BEEN DEMONSTRATED THAT THE OFFENSE WAS LINKED TO SUBVERSIVE ACTIVITIES.

4. COMMENT. WE CONSIDER THESE HEARTENING DEVELOPMENTS, AS THEY DEMONSTRATE THAT ARGENTINA STILL HAS AN INDEPENDENT CIVILIAN JUDICIAL SYSTEM, AND THAT MILITARY THEMSELVES APPARENTLY RECOGNIZE SOME DEGREE OF RATIONALITY IN APPLICATION OF MILITARY JUSTICE TO "SUBVERSION" CASES. CIVILIAN COURTS ARE FORCED TO BE RECKONED WITH HERE, AND HAVE DISPLAYED INDEPENDENT JUDGMENT IN PAST FEW MONTHS OF MILITARY REGIME. GUIDELINES ARE NOT COMPLETELY CLEAR, AS IS ILLUSTRATED BY DIFFERING CIVILIAN JUDGES' INTERPRETATIONS OF APPLICABILITY OF GOA'S SUSPENSION OF CONSTITUTIONAL RIGHT TO OPT TO LEAVE COUNTRY RATHER THAN BE DETAINED UNDER STATE OF SIEGE PROVISIONS. ONE FEDERAL JUDGE HAS JUST RULED THAT SUSPENSION OF OPTION IS INEFFECTIVE AND HAS ORDERED GOA TO PERMIT DEPARTURE OF A DETAINEE (REFTEL), WHILE ANOTHER FEDERAL JUDGE HAS RULED THE OPPOSITE AND DENIED A PETITION TO LEAVE UNDER THE CONSTITUTIONAL OPTION. RATHER THAN SIMPLY ASSERT THAT CIVIL COURTS HAVE NO JURISDICTION IN STATE OF SIEGE MATTERS, GOA HAS SUBMITTED ITS CASE TO SUPREME COURT.

5. WE ARE WELL AWARE THAT MANY DETAINEES NEVER REACH COURT JURISDICTION, CIVIL OR MILITARY, BEING KILLED OR INDEFINITELY DETAINED BY SECURITY FORCES. IT IS ENCOURAGING, HOWEVER, THAT GOA AT LEAST RECOGNIZED PRINCIPLE OF INDEPENDENCE AND JURISDICTION OF CIVIL COURTS AND THAT CIVIL COURTS IN TURN SHOW CLEAR EVIDENCE OF SOME WILLINGNESS TO DECLARE LIMITS TO

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GOVERNMENT'S POWERS IN SECURITY (AND THUS HUMAN RIGHTS) MATTERS.
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Message Attributes

Automatic Decaptioning: X
Capture Date: 01 JAN 1994
Channel Indicators: n/a
Current Classification: UNCLASSIFIED
Concepts: HUMAN RIGHTS, SUPREME COURT, LAW, MILITARY JUSTICE
Control Number: n/a
Copy: SINGLE
Draft Date: 08 OCT 1976
Decaption Date: 01 JAN 1960
Decaption Note:
Disposition Action: RELEASED
Disposition Approved on Date:
Disposition Authority: coburnhl
Disposition Case Number: n/a
Disposition Comment: 25 YEAR REVIEW
Disposition Date: 28 MAY 2004
Disposition Event:
Disposition History: n/a
Disposition Reason:
Disposition Remarks:
Document Number: 1976BUENOS06648
Document Source: CORE
Document Unique ID: 00
Drafter: n/a
Enclosure: n/a
Executive Order: GS
Errors: N/A
Film Number: D760381-0622
From: BUENOS AIRES
Handling Restrictions: n/a
Image Path:
ISecure: 1
Legacy Key: link1976/newtext/t19761069/aaaachyf.tel
Line Count: 110
Locator: TEXT ON-LINE, ON MICROFILM
Office: ACTION ARA
Original Classification: CONFIDENTIAL
Original Handling Restrictions: n/a
Original Previous Classification: n/a
Original Previous Handling Restrictions: n/a
Page Count: 3
Previous Channel Indicators: n/a
Previous Classification: CONFIDENTIAL
Previous Handling Restrictions: n/a
Reference: 76 BUENOS AIRES 6611
Review Action: RELEASED, APPROVED
Review Authority: coburnhl
Review Comment: n/a
Review Content Flags:
Review Date: 12 MAY 2004
Review Event:
Review Exemptions: n/a
Review History: RELEASED <12 MAY 2004 by greeneet>; APPROVED <14 SEP 2004 by coburnhl>
Review Markings:

Margaret P. Grafeld
Declassified/Released
US Department of State
EO Systematic Review
04 MAY 2006

Review Media Identifier:
Review Referrals: n/a
Review Release Date: n/a
Review Release Event: n/a
Review Transfer Date:
Review Withdrawn Fields: n/a
Secure: OPEN
Status: NATIVE
Subject: SUPREME COURT AND GOA AGREE ON LIMIT OF MILITARY JUSTICE JURISDICTION
TAGS: PGOV, SHUM, AR
To: STATE
Type: TE
Markings: Margaret P. Grafeld Declassified/Released US Department of State EO Systematic Review 04 MAY 2006